

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION JAN 08 2015

SC Court of Appeals

Commissioner T. Scott Beck
Commissioner Susan S. Barden
Commissioner Avery B. Wilkerson, Jr.

Appellate Case No.: 2015-002092
SCWCC File No. 1200479

Dallas Paul Bessinger, Claimant

v.

R-N-M Builders & Associates, LLC, Employer; and
FirstComp a division of Markel, Inc., Carrier

of whom the South Carolina Uninsured Employers'
Fund is the Appellant/Respondent

And FirstComp a division of Markel, Inc., is the Respondent/Appellant

**APPELLANT/RESPONDENT, SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND'S, INITIAL RESPONDENT'S BRIEF,**

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Appellate Panel Erred in vacating the December 18, 2012 Order of the Single Commissioner and remanding the case for a De Novo hearing?

STATEMENT OF THE CASE

Appellant/Respondent relies on the Statement of the Case set forth in its Appellant's brief as well as the Statement of the Case as set forth by the Respondent/Appellant herein.

ARGUMENT

Respondent/Appellant herein alleges that the Commission's Appellate Panel Order dated April 17, 2014, wherein the Single Commissioner's Order was vacated and the matter was remanded for a Hearing De Novo is "facially invalid and does not comply with the requirements of the South Carolina Workers' Compensation Act...and was improper and deficient in vacating the 12/18/12 Order without stating with specificity the basis for its decision".

This Order of Remand states, "UEF requested the Commission review the single Commissioner's Decision and Order to address 7 questions of law or fact regarding the Commissioner's findings. The Form 30 with attachments is contained in the Commission's file." No restrictions or further directions were placed on the Hearing De Novo.

Appellant/Respondent disagrees with the proposition that the Commission does not have the authority to remand a case. The Commission is given great latitude in its' appellate role. The Commission can affirm, remand, reverse, or modify an Order from the Single Commissioner. (Bartley v. Allendale Co. School District, 392 S.C. 300, 709 S.E.2d 619 (2011)) The Commission even sits in a position to make new findings of fact.

Some statutes and regulations (specifically S.C. Code Ann. Section 42-17-50 and S.C. Code Regs. Section 67-709 (E)) specifically address the ability of the Commission to remand a case in certain circumstances. The Respondent/Appellant alleges that because these two statutes allow a remand that these are the only reasons the Appellate panel can remand a case to a Single Commissioner for other reasons.

There are many reported cases that discuss issues that have surfaced when the Commission has remanded cases to the Single Commissioner. (e.g. Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (2005); Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (S.C. Ct. App. 1993)). However, there is no authority for the proposition that the Commission may NOT remand cases to a Single Commissioner.

While Appellant/Respondent disagrees with the position that the Commission does not have the authority to vacate an order and have the case remanded, Appellant/Respondent does agree that the Full Commission in ordering the remand failed to set forth particular findings of fact or conclusions of law as necessitated in S.C. Code Section 1-23-350 and explained in Bobo v. Marshane Corporation, 302 SC 86 (S.C. Ct. App. 1990).

The Order does state specifically that the “UEF requested the Commission to review the single Commissioner’s Decision and Order to address 7 questions of law or fact regarding the Commissioner’s findings.” At a minimum this is notice that at least these 7 issues should be addressed on remand. It does not appear that specific findings

of fact or conclusions of law were necessary to explain what issues had to be tried in a De Novo hearing.

According to case law unless a remand order is specific with limitations or specifically states what the De Novo hearing is to determine then the De Novo tribunal is not restricted in its' De Novo hearing. When an Order of remand has "specific directions" then the rehearing tribunal must comply with those directions and may not go further by addressing issues or making rulings outside of the remand directions. (Bobo Id. 3)

In the case at bar all the 7 issues on the Form 30 were never addressed by the Appellate Panel or by the Single Commissioner on Remand. Further, because the remand order did not restrict or direct the De Novo hearing in any way, then the new tribunal had the authority to hear additional issues. The De Novo hearing Order should have, at a minimum, addressed the original seven (7) issues on appeal to the Appellate Panel.

CONCLUSION

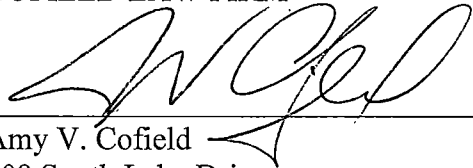
It is well established that the Appellate Panel of the Commission has the authority to remand a case. Because there were no directions or restrictions on remand the De Novo trying officer was free to consider new issues.

Although the Appellate Panel Order failed to state its own findings of fact or conclusions of law it was clear from the Order that, at a minimum, the seven (7) issues raised on the appeal of the SCUEF's Form 30 needed to be addressed on remand. They were not, and must be.

Respectfully Submitted,

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By:



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January 8, 2016
Lexington, South Carolina

THE STATE OF SOUTH CAROLINA
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And FirstComp a division of Markel, Inc., is the Respondent/Appellant

PROOF OF SERVICE

I certify that I have served the **APPELLANT/RESPONDENT, SOUTH CAROLINA UNINSURED EMPLOYERS' FUND'S, INITIAL RESPONDENT'S BRIEF**, by depositing a copy of same in the United States Mail, postage prepaid, on this 8th day of January, 2016, addressed to the following:

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

South Carolina Workers' Compensation Commission
Attn: Amy Bracy, Judicial Director
Post Office Box 1715
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Steven D. Haymond, Esq.
Harris & Graves, P.A.
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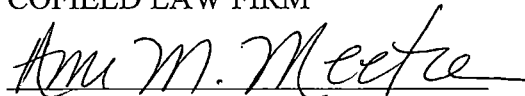
Unrepresented Parties:

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Pelion, South Carolina 29123

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January 8, 2016
Lexington, South Carolina



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January 8, 2016

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JAN 08 2016

SC Court of Appeals

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

**Re: Dallas Paul Bessinger v. R-N-M Builders & Associates, LLC and FirstComp
a division of Markel, Inc. and South Carolina Uninsured Employers' Fund
Appellate Case No.: 2015-002092
Our File No.: 42.16**

Dear Mrs. Kitchings:

Please find enclosed herewith the following original documents for filing in the above-referenced matter:

1. Appellant/Respondent, South Carolina Uninsured Employers' Fund's, Initial Respondent's Brief; and
2. Proof of Service of the Appellant/Respondent's Initial Respondent's Brief.

I have also enclosed herewith one (1) copy of the above-referenced documents. I would respectfully request that you please file the originals in your usual fashion and return a time-stamped copy of each of the enclosed documents to me in the self-addressed stamped envelope I have enclosed for your convenience.

By carbon copy of this letter, I am hereby serving all parties with a copy of the enclosed documents.

Thank you in advance for your assistance in this matter. If you have any questions regarding the enclosures or need additional information, please don't hesitate contacting me.

Sincerely,

Amy V. Cofield

Enclosures

- cc: Ms. Amy Bracy, Judicial Director (with copy of enclosures)
South Carolina Workers' Compensation Commission
Steven D. Haymond, Esq. (with copy of enclosures)
R. Daniel Addison, Esq. (with copy of enclosures)
Emory Wilkie (with copy of enclosures)
John Loughery (with copy of enclosures)
RNM Builders & Associates, LLC

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